

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID EARL WILLIAMS,
Plaintiff,

v.

ANDRE WILLIAMS, et al.,
Defendants.

Case No. 16-cv-02403 EDL (PR)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, an inmate at San Quentin State Prison, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983.¹ Plaintiff is granted in forma pauperis status in a separate order. For the reasons stated below, the complaint is DISMISSED with leave to amend.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims

¹ Plaintiff has consented to magistrate judge jurisdiction. (Dkt. No. 1.)
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1 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
 2 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). *Pro se*
 3 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
 4 Cir. 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
 6 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
 7 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
 8 487 U.S. 42, 48 (1988).

9 B. Legal Claims

10 In the complaint, plaintiff claims that on January 22, 2014, defendant Hobbicraft Manager
 11 Andre Williams improperly confiscated without notice a painting that plaintiff created. Andre
 12 Williams demanded that plaintiff make changes to the painting, and that plaintiff would not be
 13 able to mail or place the painting in Andre Williams' hobby store until plaintiff had complied.
 14 Plaintiff intended to send the painting to plaintiff's attorney.

15 There are several deficiencies with this complaint. First, plaintiff names not only
 16 Hobbicraft Manager Andre Williams as a defendant, but he also names Appeals Coordinator M.
 17 Davis, Appeals Coordinator R. Baxter, Sgt. E. Patao, Counselor V. Stanford, and Warden Kevin
 18 Chappell. However, plaintiff does not link these other defendants with any particular wrongdoing.
 19 Plaintiff is advised that there is no constitutional right to a prison administrative appeal or
 20 grievance system. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). A prison official's
 21 failure to process grievances, without more, accordingly is not actionable under Section 1983. *See*
 22 *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993); *see also Ramirez*, 334 F.3d at 860 (holding
 23 that prisoner's claimed loss of a liberty interest in the processing of his appeals does not violate
 24 due process because prisoners lack a separate constitutional entitlement to a specific prison
 25 grievance system). Liability may be imposed on an individual defendant under 42 U.S.C. § 1983

1 if the plaintiff can show that the defendant's actions both actually and proximately caused the
2 deprivation of a federally protected right. *See Lemire v. Cal. Dept. of Corrections &*
3 *Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir. 2013). Without proffering facts that may be
4 construed to reasonably show that any of these defendants caused some violation, plaintiff has not
5 stated a cognizable claim against them. Accordingly, Appeals Coordinator M. Davis, Appeals
6 Coordinator R. Baxter, Sgt. E. Patao, Counselor V. Stanford, and Warden Kevin Chappell are
7 dismissed. If plaintiff believes he can allege a cognizable claim against them in good faith, he
8 may amend his complaint to do so.

9 Second, the court cannot determine whether the confiscation of property was random and
10 unauthorized or pursuant to an established state procedure. Ordinarily, due process of law requires
11 notice and an opportunity for some kind of hearing prior to the deprivation of a significant
12 property interest. *See Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 19 (1978). Neither
13 the negligent nor intentional deprivation of property states a due process claim under Section 1983
14 if the deprivation was random or unauthorized, however. *See Parratt v. Taylor*, 451 U.S. 527,
15 535-44 (1981) (state employee negligently lost prisoner's hobby kit), *overruled in part on other*
16 *grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 533
17 (1984) (intentional destruction of inmate's property). The availability of an adequate state post-
18 deprivation remedy, e.g., a state tort action, precludes relief because it provides sufficient
19 procedural due process. *See Zinermon v. Burch*, 494 U.S. 113, 128 (1990) (where state cannot
20 foresee, and therefore provide meaningful hearing prior to, deprivation statutory provision for
21 post-deprivation hearing or common law tort remedy for erroneous deprivation satisfies due
22 process). If the deprivation is not random or unauthorized, but the result of "established state
23 procedure," the availability of a post-termination tort action does not necessarily provide due
24 process. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-37 (1982) (failure on part of
25 state commission to hold hearing within statutory time limits not permitted to terminate timely

1 filed claim). *Parratt* does not apply where the state has procedures designed to control the actions
 2 of state officials and the officials act pursuant to those procedures. *See Zimmerman v. City of*
 3 *Oakland*, 255 F.3d 734, 738 (9th Cir. 2001). In other words, due process may be violated where a
 4 deprivation is predictable and pre-deprivation process possible, but state officials, acting under
 5 apparent authority of state procedures, provide no pre-deprivation procedure and are specifically
 6 charged with the authority to effect the deprivation complained of. *See id.* at 739.

7 For the above reasons, the complaint will be dismissed with leave to amend so that
 8 plaintiff may clarify and explain in a concise statement of facts what Andre Williams did, and how
 9 it violated plaintiff's constitutional rights. Federal Rule of Civil Procedure 8(a)(2) requires only
 10 "a short and plain statement of the claim showing that the pleader is entitled to relief." *Erickson v.*
 11 *Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). The court is not required to sift through
 12 plaintiff's exhibits and attachments in an effort to determine what plaintiff's claim(s) are. Plaintiff
 13 must set forth coherent, legally viable claims to "allow[] the court to draw the reasonable inference
 14 that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 15 (2009).

16 Accordingly, as currently pled, plaintiff has failed to state a claim for relief. Plaintiff's
 17 complaint is DISMISSED. The court will give plaintiff an opportunity to amend his complaint to
 18 state a claim for relief if he can do so in good faith.

19 CONCLUSION


20 1. The complaint is DISMISSED with leave to amend. The amended complaint must be
 21 filed within twenty-eight (28) days of the date this order is filed and must include the caption and
 22 civil case number used in this order and the words AMENDED COMPLAINT on the first page.
 23 Because an amended complaint completely replaces the original complaint, plaintiff must include
 24 in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
 25 1992). He may not incorporate material from the original complaint by reference. Failure to file

1 an amended complaint within the designated time and in compliance with this order will result in
2 the dismissal of this action.

3 2. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
4 informed of any change of address by filing a separate paper with the clerk headed "Notice of
5 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so
6 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
7 Procedure 41(b).

8 **IT IS SO ORDERED.**

9
10 DATED: August 3, 2016


ELIZABETH D. LAPORTE
UNITED STATES MAGISTRATE JUDGE

United States District Court
Northern District of California